

DSTO - Industry Engagement Probity Principles

Introduction

The Probity Principles set out in this document have been developed by the **DSTO Probity Board**¹ in order to provide practical guidance to DSTO personnel to develop and implement effective and defensible industry engagement strategies in support of the achievement of DSTO's Mission of applying science and technology to protect and defend Australia and its national interests.

In undertaking this Mission DSTO performs four key roles. DSTO:

- provides support to Australian Defence and national security operations;
- supports the sustainment of Defence in-service capabilities;
- delivers key advice for future Defence capability acquisitions; and
- future-proofs Defence with a robust strategic research program.

In order to fulfil these roles, it is critical that DSTO engage constructively and collaboratively with the Defence industry and research sectors. Open engagement is to be encouraged although the approach adopted must be one which does not in any way compromise the ability of DSTO to achieve its Mission and to act as a trusted adviser to Defence.

¹ The role of the DSTO Probity Board was to develop independent advice and counsel to the Chief Defence Scientist in the following areas:

- Risks and conflict of interest situations arising from DSTO's engagement with industry and other external parties which may impact on DSTO.
- Controls or measures that could be taken to identify and reduce the likelihood of a risk or conflict occurring.
- Mechanisms or pathways by which DSTO can appropriately conduct its engagement with industry and other external parties in order to deliver its responsibilities to the ADF and the Department of Defence.

DSTO's Defence clients include: the Royal Australian Navy; the Australian Army; the Royal Australian Air Force; Capability Development Group; Defence Materiel Organisation; the Vice Chief of the Defence Force; Commander Joint Operations; Defence Intelligence and Security Group; Defence Chief Information Officer Group and Defence Strategy Executive.

This Guide is divided into three parts. **Part 1** looks briefly at the rationale for DSTO undertaking industry engagement activities. **Part 2** sets out some overarching guiding probity principles which have general application to all DSTO industry engagement activities. **Part 3** examines some specific types of industry engagement and, drawing on the abovementioned guiding principles, provides tailored probity guidance for each type of interaction.

This Guide does not attempt to replicate or replace the guidance which is already available to DSTO personnel as set out in the *Chief Executive's Instructions (CEIs)*, the *Defence policy manuals and handbooks* such as the *Defence Procurement Policy Manual (DPPM)* and the *Defence Capability Development Handbook (DCDH)*, and the *Commonwealth Procurement Rules (CPRs)*.



Part 1 - Why undertake industry engagement?

DSTO and defence industry share a common goal which is to develop and enhance Defence capability.

By working collaboratively with industry DSTO can:

- provide expert input to the development of future capabilities for Defence by industry;
- share with industry DSTO knowledge and expertise;
- assist industry to provide ongoing sustainment of Defence in-service capabilities;
- obtain current knowledge of industry trends and capabilities;
- obtain industry input to DSTO research programs;
- assist industry to test/trial new Defence-centric technologies;
- assist Defence to become a “smarter” buyer of Defence capability;
- ensure that industry is kept up to date on emerging Defence capability needs;
- assist to resolve/rectify problems with existing Defence capabilities; and
- provide DSTO staff with the opportunity to work alongside industry to further enhance and develop their own skills and expertise.

From a Defence industry perspective proactive and open engagement with DSTO also offers many advantages. These include:

- enabling industry to inform Defence through DSTO of industry capabilities and new developments;
- allowing industry to access DSTO expertise; and
- facilitating opportunities for joint industry/DSTO collaboration.

Well considered and targeted industry engagement can also assist in reducing the cost burden both to DSTO and industry associated with developing new and sustaining current Defence capabilities.



Part 2 - Guiding Probity Principles

The purpose of having a sound probity regime for DSTO is to facilitate DSTO's engagement with industry within an appropriate ethical and legal framework.

A sound probity regime does not inhibit DSTO in its decision making or the discharge of its responsibilities to the Australian Defence Force and the Department of Defence. That is, all decisions and discharging of responsibilities should be based on ethical, honest, and proper considerations. An appropriately structured probity regime should not add any significant impost to this process.

Probity means integrity, honesty, and ethical conduct and propriety in dealings. In the Government context, probity is often used in a general sense to mean a defensible process which is able to withstand internal and external scrutiny.

The Probity Board recommends that ethical behaviours and decision making, particularly avoiding actual or perceived conflicts of interest, be reinforced as part of DSTO's culture, reiterated by the senior leadership within DSTO, including through the DSTO Chief Executive Instructions, and by entrenching probity considerations in staff training programs along with other key areas such as WH&S and Security.

DSTO's involvement in industry engagement activities has the potential to give rise to actual, and perhaps more often than not, perceived conflicts of interest both for DSTO as an organisation as well as for individual DSTO personnel.

Examples of where these conflicts could arise include:

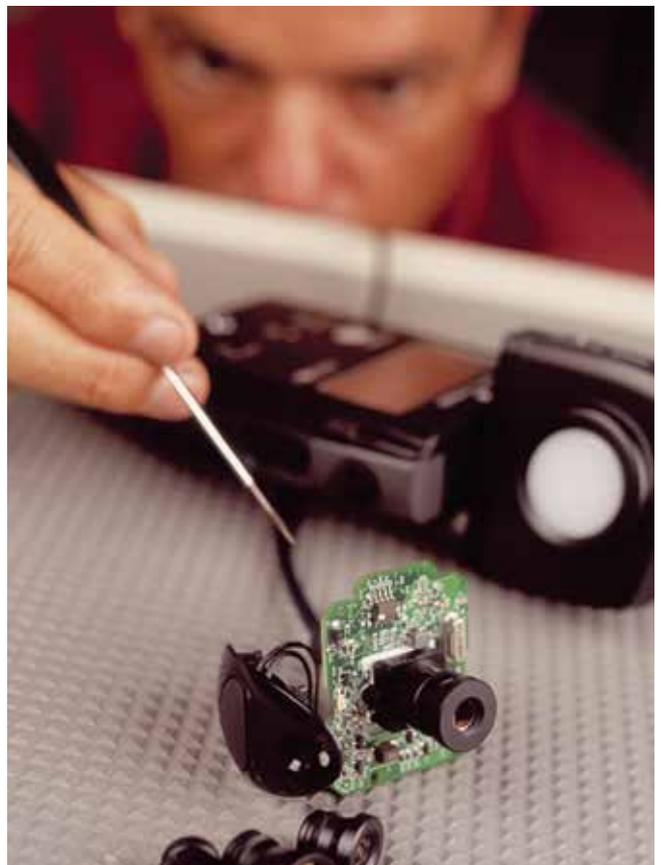
- where DSTO has a stake in developing the technological solutions that could be adopted by Defence whilst at the same time providing advice to Defence (including undertaking Technical Risk Assessments) on the acquisition of these solutions;
- where DSTO enters into a strategic alliance which may in some way restrict or constrain DSTO's ability to provide independent advice to Defence, for example, where strict confidentiality arrangements are imposed on DSTO;
- where DSTO accepts financial support for its activities from industry;
- where DSTO is not seen to be treating industry participants in an equitable and fair manner, i.e. it is perceived to be "playing favourites" with certain companies;
- where DSTO is working closely with industry participants who may at the same time be tendering to Defence to provide a specific capability and DSTO either (a) has access to commercial in confidence Defence sourced information which, if provided to a tenderer, could provide that tenderer with an unfair advantage in the Defence tender process; or (b) is providing technical support to Defence in undertaking the evaluation of tender responses.



Guiding principles

Against this background, and in order to assist DSTO to accomplish its roles, the Probity Board recommends the adoption of the following guiding principles. The Board recommends that these principles be noted by Defence and be consistently applied by DSTO across all industry relationships.

1. Industry engagement should be undertaken with the Commonwealth's interests (as represented by the Department of Defence) as the highest priority. Accordingly, no agreement with industry should have the practical effect of constraining DSTO's ability to fulfil its role of supporting Defence.
2. DSTO should seek to avoid any perception of conflict of interest in its dealings with industry, as far as reasonably practicable. Accordingly, DSTO's processes and procedures should demonstrate sound probity awareness and risk management strategies.
3. DSTO should be financially disinterested when exercising its judgement as to whether to engage with industry and, in particular, not seek to make a profit from Australian industry. This does not however prevent DSTO from seeking cost recovery where industry seeks to utilise DSTO facilities or personnel.
4. DSTO should avoid inappropriate information exchange and allegations of favouritism/bias. This risk increases with the proximity of contractors (whose employer may be a supplier to Defence) to DSTO staff who may be engaged on tender evaluation/assessment tasks for Defence. Protocols should be implemented by DSTO to include the physical and electronic quarantining of access to commercially sensitive information held by DSTO from on-site contractors, to avoid any actual or perceived unfair commercial advantage being provided to these contractors over their competitors.
5. DSTO should undertake its engagement with industry on an open, transparent and equitable basis.
6. DSTO should not, without the prior agreement of Defence, provide support to any entity that is known to be in the process of tendering for a Department of Defence contract where it could be reasonably expected that DSTO may also be involved in providing direct support to Defence.
7. Where DSTO does become involved in working with industry to undertake research and to jointly develop new technologies the decision to collaborate should solely be based on what DSTO believes best enables it to achieve its role of supporting the Defence Force.
8. There may be circumstances where it is appropriate for DSTO to engage with industry although all of the above principles may not be able to be easily met. Specific cases should be brought to the Probity Board for advice in such situations.



Part 3 - Types of industry interactions

The following types of interactions have been presented to the Probity Board to demonstrate particular issues of concern that have arisen during DSTO's interactions with external parties.

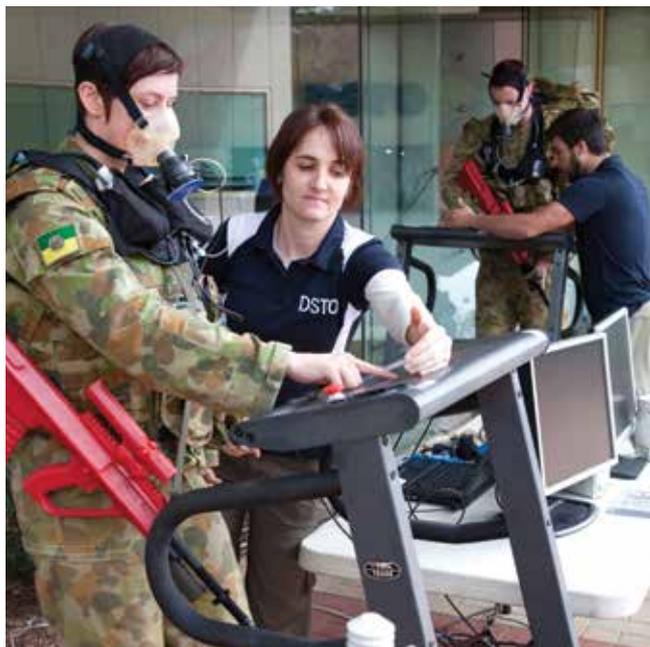
1 - Commercial use of DSTO test facilities

DSTO has a range of unique facilities that are not replicated by industry in Australia, due to cost and other factors.

DSTO is often approached by industry for access to the use of these facilities which may or may not also include drawing on DSTO staff expertise (for example to operate the facilities/run various tests etc).

Often the company making the approach is either already in contract with the Department of Defence, or is otherwise positioning itself to participate or actually participating as a tenderer in a tender process which is being conducted by the Department of Defence.

In these circumstances, DSTO needs to balance the provision of such assistance to industry, without creating the perception of favouritism, while maintaining the ability to be seen to be able to provide impartial and independent expert advice to Government without fear of technical or professional compromise.



In addition to compliance with the guiding principles, the Probity Board recommends that:

- Contracts with industry should be designed with consideration for the Commonwealth's interests (as represented by the Department of Defence) as the highest priority.
- Where a 'live' tender situation exists, DSTO should not, as a general principle, provide assistance to a tenderer in preparing its tender response to Defence. Such assistance would have the potential to compromise DSTO's ability to provide impartial and independent advice to Defence during the tender evaluation and risk assessment phases.
- Use of DSTO facilities should be based on the principles of cost recovery and non-preferred access. DSTO should transparently define how cost recovery is determined, aligned with explaining the different approach to cost recovery used in collaborations with allied countries. DSTO should not generate a 'surplus' profit that could be regarded as an inducement to favour the interests of a commercial partner.
- The regime applied to use of DSTO facilities should be about protecting Australian interests to a degree equal or superior to that which would be achieved if the same work was done overseas. Any adverse variation to this standard needs to be justified explicitly.

- Where DSTO is providing access to test facilities/services to a current Defence contractor in order to facilitate the ability of that company to meet its service delivery obligations to Defence, it may often be the case that the company concerned will seek to impose obligations on DSTO to protect the confidentiality of e.g. the associated test results. In addition to requiring that DSTO not disclose this information to external third parties (including to possible competitor companies) where DSTO is also advising Defence more generally on the capability which is being tested, the company may also require that DSTO quarantine the information internally within DSTO. Continued use of internal 'Chinese walls' within DSTO to ensure confidentiality of information, with oversight at Research Leader level, may be appropriate in these situations. However, these 'Chinese walls' should not operate so as to prevent DSTO from ensuring that all essential and relevant information is able to be shared with those within Defence who depend on access to such information (especially in relation to health and safety). Contract provisions should therefore include 'let out' confidentiality clauses for DSTO if DSTO identifies information which it believes is vital to the interests of the Commonwealth (and/or its personnel).
- For new contracts, it is essential that arrangements are such that the prospect of facilities use at DSTO will have no bearing on whether acquisition by Defence from a particular company takes place. DSTO should have no hand in exercising options to use its facilities if available to parties contracted to Defence.
- The arrangements to apply to industry access to and use of DSTO facilities and staff should be discussed, agreed and documented between DSTO, DMO and CDG to ensure common understanding before DSTO enters into any agreement for third party use of its facilities/staff resources.

2 - DSTO role in providing Technical Risk Assessments

DSTO may on occasions be involved jointly with industry in undertaking research or the development of a particular technology which subsequently becomes the subject of a DSTO Technical Risk Assessment.

In these situations the Board recommends that:

- DSTO should ensure that any such Technical Risk Assessment is undertaken by a suitably qualified staff member who has had no prior involvement in the previous research on/ development of the technology.
- The DSTO Project Reference Group will review the Technical Risk Assessment and will determine the need for external peer review. Where necessary, individual cases will be referred to the DSTO Advisory Board for advice. The Project Reference Group records all details of its determinations for scrutiny as required.



3 - DSTO as the “Acknowledged” expert

DSTO is the world leader in undertaking research in a number of technology areas, where the rest of the Australian market is relatively immature and/ or no commercial organisations have the capacity or commercial imperative to design and build the technology, or run continuous research and development teams.

In such cases, the underpinning expertise to identify and refine technology capability requirements and options often must come from DSTO while at the same time it must be recognised that DSTO also has the responsibility to undertake and sign off on the technical risk assessment for Defence as part of the acquisition process. This situation could place DSTO in a perceived conflict of interest position in relation to the technology involved.

The Board recommends:

- In cases where DSTO is the acknowledged expert with no local competitors, a project-specific Probity Plan should be developed and presented to the DSTO Advisory Board for in-principle advice in advance of work being undertaken. This would recognise special circumstances where no reasonable alternative exists. The Board would consider the issues, provide advice and forward it to the CDS. The approach decided should then be discussed and endorsed by DMO, and be subject to validation from appropriate external parties so that a genuine agreement on the underlying principles is obtained.



4 - Strategic Alliances with Industry

DSTO seeks to engage with major industry partners under an umbrella of strategic alliances in order to facilitate future technology development. A consistent, equitable and ethical approach to the decision to enter into and then negotiate and finalise such alliances is required.

A policy document has been developed to underpin the use of Strategic Alliance agreements. The document addresses the rationale for alliances, the different relationships with other bodies and provide clarity of purpose for DSTO. DSTO’s intent for entering into alliances with strong technological focus is articulated clearly in this document. Clarification of the role of strategic alliances in relation to other Defence alliances and with respect to DSTO’s primary role as a service provider to Defence is also made.

The Strategic Alliance template makes explicit provision for conflict of interest situations and consequences. Clauses regarding the protection of commercial-in-confidence information, intellectual property ownership rights, and declarations of related procurement tendering are included.

The DSTO Project Reference Group (PRG) will review the Technical Risk Assessment and will determine the need for external peer review, except in cases of real or perceived conflicts of interest in which case the PRG must seek external peer review. Where necessary, individual cases will be referred to the DSTO Advisory Board for advice. The Project Reference Group records all details of its determinations for scrutiny as required.